IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

WP(C).No. 14317 of 2006(D)

PETITIONER:

AYYAPPAN, ADICHAN, AGED 57,
S/O. CHANDRAN, NJATTAMCHIRA PUTHANPURAYIL HOUSE,
PARAKKANAM, PATHANAMTHITTA (EX-ELECTRICITY
WORKER, MOOZHIYAR, PATHANAMTHITTA.)

BY ADV. SRI.K.S.MADHUSOODANAN,
SRI.T.V.JAYAKUMAR NAMBOODIRI.

RESPONDENT:

KERALA STATE ELECTRICITY BOARD,
VYDUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM,
REP. BY SECRETARY.

BY ADV. SRI.K.S.ANIL, SC, KSEB,
SRI. ASOK M.CHERIYAN, SC, KSEB.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.14317/2006:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE MEMO OF CHARGE WITH STATEMENT OF ALLEGATION DTD. 28/03/2001 ISSUED BY THE EXE. ENGINEER, ELECTRICAL DIVISION, ADOOR.

EXT.P.2: COPY OF THE REPORT OF ENQUIRY.

EXT.P.3: COPY OF THE ORDER DTD. 16/05/02 BY THE CHIEF ENGINEER (HRM).

EXT.P.4: COPY OF THE NOTICE NO. VG.A4.452/2360 DTD. 23/12/2002.

EXT.P.5: COPY OF THE PETITIONER'S EXPLANATION DTD. 30/03/2003.

EXT.P.6: COPY OF THE ORDER NO. VG.A4.452/97 DTD. 29/05/2003.

EXT.P.7: COPY OF THE JUDGMENT IN W.P.(C). NO. 18368/03 DTD. 01/07/2005.

EXT.P.8: COPY OF THE WRIT APPEAL NO. 2368/05 DTD. 24/11/05

EXT.P.9: COPY OF THE ORDER DTD. 17/04/06.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

V.GIRI,J.

W.P.(C) No. 14317 of 2006

Dated this the 26th day of September, 2007

JUDGMENT

The petitioner, a member of the Scheduled Tribe, who was engaged as a CLR worker in the Electricity Board, was regularised as an electricity worker with effect from 1.2.1971. While continuing in service, he was issued Ext.P1 memo of charges by the Executive Engineer (Electrical Division), Adoor inter alia alleging that the petitioner had secured employment with the Electricity Board, impersonating his uncle and it is actually, his uncle who was entitled to be engaged as a CLR worker on the basis of the earlier services rendered on a casual basis, at the time of the construction work in the Sabarigiri Hydel Project. Apparently, the memo of charges were issued on the basis of a complaint dated 9.1.1996 lodged by the petitioner's uncle.

2. The petitioner submitted his objections and ultimately a departmental enquiry was conducted, as per the orders of the Chief Engineer, by the Executive Engineer (Electrical Circle) Pathanamthitta. Ext.P2 enquiry report was submitted by the enquiring authority. It is noted as follows:

> ***"The defence witnesses stated that the petitioner was a Landlord in possession of not less than 15 acres of land and that they have never seen him working under the Board. With what has come out through the enquiry,***

> ***there is a strong element of doubt in favour of the accused. Since the charge of mis-conduct in having secured job under the Board by impersonation could not be established, the accused Sri.Gangadharan known as `Ayyappan Adichan' in the records is declared to be not guilty of the charge."***

3. Taking note of the enquiry report, the Chief Engineer (HRM) by Ext.P3 Order dated 16.5.2002 ordered that further disciplinary proceedings against the petitioner be dropped and that the petitioner be exonerated from the charges levelled against him.

4. The petitioner ought to have retired from service on 31.10.2003. But, before his retirement, Ext.P4 notice of show cause was issued by the Chairman of the Electricity Board purportedly invoking the powers under the Kerala State Electricity Board Employees (Classification, Control and Appeal) Regulation 1969 (hereinafter referred to as `Regulations'). As per Ext.P4, the Chairman, after finding that the petitioner had actually impersonated his uncle and is therefore liable to be removed from service, called for objections from the petitioner to the said proposal. Petitioner submitted Ext.P5 objection. These were found to be inadequate and Ext.P6 order was passed on 29.5.2003 removing the petitioner from service.

5. Ext.P6 was challenged by the petitioner in Writ Petition No.18368/2003. By Ext.P7 judgment, this Court quashed Ext.P6 and held as follows:

> ***Therefore, the writ petition is allowed and Ext.P6 is quashed. Petitioner shall be entitled to all consequential benefits as if Ext.P6 has not been passed, including the pensionary benefits which shall be***

> ***disbursed to him without any delay and at any rate, within a period of three months from the date of receipt of a copy of this Judgment."***

6. Ext.P7 judgment was challenged by the Board in Writ Appeal No.2368/2005. The Division Bench did not interfere with Ext.P7 judgment. The Division Bench disposed of the Writ Appeal as per Ext.P8 judgment. The operative portion of the judgment reads as follows:

> ***"Learned Standing Counsel for the Board expressed an apprehension that the judgment may stand in the way of the Board looking into the matter. We make it clear that the judgment will not stand in the way of any lawful powers being exercised by the Board in accordance with law. Subject to the above observations, the writ appeal is dismissed."***

7. Therefore, Ext.P6 order passed by the Chairman under Clause 35 of the Regulations was set aside by this Court in Ext.P7 judgment. Ext.P7 judgment was also affirmed by the Division Bench in Ext.P8 judgment. The Division Bench, after affirming Ext.P7 judgment, only observed that the judgment will not stand in the way of any lawful powers being exercised by the Board, in accordance with law.

8. After Ext.P8 judgment, the Board proceeded to pass an order on 17.4.2006 as Ext.P9. In Ext.P9 , it is stated by the Full Bench that the findings of the Chairman, vide Ext.P6 order, whereby he had cancelled Ext.P3 order issued by the Chief Engineer exonerating the petitioner from the charges levelled against him, and by which the Chairman had terminated the services of the petitioner, are correct. Thereupon the Board proceeded to

exercise its power under Clause 35 of the Regulations. The Board, then reviewed the action taken by the Chairman and then confirmed the same. It is Ext.P9 order which has been challenged in the writ petition. A counter affidavit has been filed on behalf of the Electricity Board supporting Ext.P9 order. Petitioner has filed a reply.

9. I have heard the learned counsel for the petitioner Mr.Madhusoodharan and learned Standing counsel for the Electricity Board Mr.Asok Cherian.

10. The question for consideration is whether Ext.P9 order is sustainable or not. Mr.Madhusoodanan contends that Ext.P9 order is vitiated by absence of jurisdiction or at least by an illegal exercise of the jurisdiction. Clause -35 of the Regulations enable the Board to exercise the power of review in relation to any order passed by a subordinate authority. A reading of Ext.P9 order will show that essentially the Board has exercised the power of review in relation to Ext.P6 order passed by the Chairman. I agree with the submission made by the learned counsel for the petitioner that it obviously could not have been done. This is so, because, Ext.P6 order passed by the Chairman had already been quashed by this Court in Ext.P7 judgment. Ext.P7 judgment was affirmed by the Division Bench in Ext.P8 judgment. What has been set aside by this Court is therefore, no longer in existence, in the eyes of law.

11. In the circumstances, the Board, obviously, did not have the jurisdiction to exercise the power of review in relation to a non-existent order. Clause-35 of the Regulations could not have enabled the Board to

resuscitate an order which has already been passed by this Court by Ext.P6 judgment and then proceed to review the same and consequently affirm the action taken in Ext.P6. To that extent, Ext.P9 will have to be found as lacking in jurisdiction.

12. In Ext.P6 judgment, this Court has already directed the Board to disburse the retirement benefits as are found due and admissible to the petitioner. Mr.Madhusoodhanan submits that, as per Ext.P6 judgment, the Board has been directed to disburse the salary and the retirement benefits due and admissible to the petitioner within a time frame, as indicated above.

13. In the result, the writ petition is allowed. Ext.P9 order passed by the Board is quashed. Mr.Asok Cherian, learned Standing Counsel for the Board submits that in Ext.P8 judgment, this Court had granted liberty to the Board to proceed in accordance with law. Obviously, any liberty granted by the Division Bench of this Court, cannot be diluted or modified by my judgment. No further observations are either warranted or called for in this regard, in view of Exts.P6 and P7 judgments.

The writ petition is allowed, in the manner, as indicated above.

V.GIRI, JUDGE

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